

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6267 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

S A DALWADI

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

MR NIGAM SHUKLA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, an engineer of the Public Health Engineering Service of the Government of Gujarat, filed this petition before this Court praying therein for direction to respondent to assign him seniority above Shri B.V. Shukla, who was junior to him when the petitioner was promoted in July 1971 as Executive Engineer.

2. The facts which are not in dispute are to be taken briefly. On 12.7.72, the petitioner was promoted as Executive Engineer. Reversion was made for the reason that G.P.S.C. has not approved his promotion. At the time when the matter was considered by G.P.S.C. to accord the approval to promotion of the petitioner to the post of Executive Engineer, two departmental inquiries were pending against him. The petitioner challenged the aforesaid reversion before this Court by filing Special Civil Application No.9 of 1975. This Court has not interfered in the matter and the matter was taken up by the petitioner in L.P.A. The Division Bench has also declined to interfere with the order of reversion of the petitioner on the ground that the State Government has acted on the advice of the Public Service Commission and therefore the allegations and pending inquiry were only motive and not the foundation of the order and order being not punitive there is no violation of Article 311 or equality granted under Article 16. The petitioner has been exonerated in both the departmental inquiries under the orders dated 10th February 1976 and 10th May 1976. This fact is not in dispute between the parties. After exoneration, the petitioner made a representation, but he was given out that his representation is pending for consideration. The petitioner was thereafter given promotion on the post of Executive Engineer under the order dated 10th May 1982 effective from 19th May 1981. The petitioner was further given promotion to the post of S.E. on 10th December 1987 and then to the post of Chief Engineer on 29th January 1992. These facts are also not in dispute. The petitioner retired from the service on 30th November 1992. The claim of the petitioner for regularising his reversion order to give him seniority from the date on which he was earlier promoted to the post of Executive Engineer, which has been declined under the reply dated 20th November 1982, and hence this petition.

3. From the facts which have come up on record, it is clear that the petitioner was reverted only on the ground that two departmental inquiries were pending against him. It is true that this reversion has been made on the advice of G.P.S.C. The G.P.S.C. has decline to approve the promotion of the petitioner because of pendency of two departmental inquiries against him. It is not the case of the respondents that there was some material before the G.P.S.C. other than these two departmental inquiries to decline to approve the promotion of the petitioner. When the petitioner has been exonerated in those two departmental inquiries, his case has to be considered afresh. The G.P.S.C. is not a

party here. But when the very decision of G.P.S.C. declining approval of promotion of the petitioner made in the year 1972 on the post of Executive Engineer and consequential order of reversion of petitioner do not survive, the matter has to be reconsidered after excluding these two materials from the record. After exoneration of the petitioner in two chargesheets, it is not the case of the respondent that his case was considered afresh by the G.P.S.C. for approval of his promotion to the post of Executive Engineer made under the order dated 12.7.72. In case after excluding these two departmental inquiries in which the petitioner has been exonerated, the G.P.S.C. accords the approval to the petitioner for promotion on the post of Executive Engineer made under order dated 12.7.72, and as such order of his reversion will also go automatically. In case the order of reversion of the petitioner goes, then naturally the petitioner will be entitled for the seniority from the year 1972 and for further consequential benefits following therefrom of giving to him position in the said seniority list.

4. In the result, interest of justice will be met in case this Special Civil Application is disposed of with directions to the respondent to send the matter of the petitioner back to G.P.S.C. for reconsideration of according approval of his promotion on the post of Executive Engineer with effect from the year 1972, with clear remarks that in two departmental inquiries which were initiated against the petitioner, he has been exonerated and with copy of this judgment. The respondent will undertake this exercise within a period of one month from the date of receipt of certified copy of this order. It is expected of G.P.S.C. also that the matter may be considered within a reasonable time, say within three months from the date of receipt of the same from respondent. In case G.P.S.C. approves the promotion of the petitioner on the post of Executive Engineer made under the order dated 12.7.72, the reversion order of the petitioner dated 1.1.75 shall be deemed to be revoked and the petitioner shall be entitled for all the consequential benefits following therefrom. The petitioner has already retired from the service and as such, further exercise should be undertaken by the respondent within a reasonable time, say within a period of three months from the date of receipt of approval of the promotion of petitioner by G.P.S.C. on the post of Executive Engineer w.e.f. 12.7.72, and shall provide all the consequential benefits to the petitioner within a period of three months thereafter. Rule is made absolute in aforesaid terms. No order as to costs.

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(sunil)